

NOTICE OF INTENT

Department of Environmental Quality
Office of Environmental Assessment
Environmental Planning Division

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Underground Storage Tanks regulations, LAC 33:XI.103; 1121; and Chapter 12 (Log #UT007).

This proposed rule sets the qualifications, notification, annual update requirements, and removal, suspension, and revocation procedures for a person to become a Response Action Contractor (RAC). RAC status allows a person or firm to carry out actions in response to a discharge or release of motor fuel from an underground storage tank and be eligible for reimbursement under the Motor Fuel Underground Storage Tank Trust Fund (MFUSTTF). The rule also corrects typographical errors and establishes new definitions. For approximately 10 years the department has, by policy, been approving persons or firms as RACs. This action will put into regulation many of the provisions from the previous policy and also revise and add other requirements. This proposed rule is in response to R.S. 30:2195.10, which requires the department to promulgate rules and regulations for the approval and compensation of response action contractors. The basis and rationale for this proposed rule are to adhere to R.S. 30:2195.10.

This proposed rule meets an exception listed in R.S. 30:2019 (D) (3) and R.S.49:953 (G) (3); therefore, no report regarding environmental/health benefits and social/economic costs is required. This proposed rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

A public hearing will be held on January 25, 2001, at 1:30 p.m. in the Maynard Ketcham Building, Room 326, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Patsy Deaville at the address given below or at (225) 765-0399.

All interested persons are invited to submit written comments on the proposed regulations. Persons commenting should reference this proposed regulation by UT007. Such comments must be received no later than February 1, 2001, at 4:30 p.m., and should be sent to Patsy Deaville, Regulation Development Section, Box 82178, Baton Rouge, LA 70884-2178 or to FAX (225) 765-5095. Copies of this proposed regulation can be purchased at the above referenced address. Contact the Regulation Development Section at (225) 765-0399 for pricing information. Check or money order is required in advance for each copy of UT007.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA 70810; 804 Thirty-first Street, Monroe, LA 71203; State Office Building, 1525 Fairfield Avenue,

Shreveport, LA 71101; 3519 Patrick Street, Lake Charles, LA 70605; 3501 Chateau Boulevard, West Wing, Kenner, LA 70065; 100 Asma Boulevard, Suite 151, Lafayette, LA 70508; 104 Lococo Drive, Raceland, LA 70394 or on the Internet at <http://www.deq.state.la.us/planning/regs/index.htm>.

James H. Brent, Ph.D.
Assistant Secretary

Title 33
ENVIRONMENTAL QUALITY
Part XI. Underground Storage Tank

Chapter 1. Program Applicability and Definitions

§103. Definitions

A. For all purposes of these rules and regulations, the terms defined in this Section shall have the following meanings, unless specifically defined otherwise in LAC 33:XI.1105 or ~~1301~~1303.

* * *

[See Prior Text]

Geologist—a person who is a graduate of an accredited institution of higher education who has successfully completed a minimum of 30 semester hours or 45 quarter hours of course work in the science of geology and has in his/her possession a minimum of a baccalaureate degree.

* * *

[See Prior Text]

Response Action—any activity, including but not limited to, assessment, planning, design, engineering, construction, operation of recovery system, or ancillary services that are carried out in response to any discharge or release or threatened release of motor fuels into the groundwater or subsurface soils.

Response Action Contractor—a person who has been approved by the department and is carrying out any response action, including a person retained or hired by such person to provide specialized services relating to a response action, and who shall provide no more than 40 percent of all response actions, based on costs, relating to a particular underground storage tank site. This 40 percent does not include those costs associated with reimbursement application preparation or laboratory analyses. When emergency conditions exist as a result of a release from a motor fuel underground storage tank, this term shall also include any person performing department-approved emergency response actions during the first 72 hours following the release.

* * *

[See Prior Text]

Specialized Services—response action activities associated with the preparation of a reimbursement application, laboratory analyses, or any construction activity, construction of trenches, excavations, installing monitoring wells, conducting borings, heavy equipment work, surveying, plumbing, and electrical work that are carried out by a subcontractor hired or retained by a response action contractor in response to a discharge or release or threatened release of motor fuels into the groundwater or subsurface soils.

* * *

[See Prior Text]

Technical Services—assessment field activities oversight; all reporting, planning, designing, and operating of corrective action and remedial systems; specialized services oversight; and other services that require geological and engineering expertise carried out in response to a discharge or release of motor fuel from UST systems into soils, groundwater, or surface water.

* * *

[See Prior Text]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2194.C.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990), amended LR 17:658 (July 1991), LR 18:727 (July 1992), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2558 (November 2000), LR 27:

Title 33
ENVIRONMENTAL QUALITY
Part XI. Underground Storage Tank

Chapter 11. Financial Responsibility

§1121. Use of the ~~Underground~~ Motor Fuel Underground Storage Tank Trust Fund

The administrative authority was authorized by R.S. 30:2194 ~~through~~ 2195.10 to receive and administer the ~~Underground~~ Motor Fuel Underground Storage Tank Trust Fund (~~UMFSTTFMFUSTTF~~) to provide financial responsibility for owners or operators of underground motor fuel storage tanks. Under the conditions described in this Section, an owner or operator who is eligible for participation in the ~~UMFSTTFMFUSTTF~~ may use this mechanism to partially fulfill the financial responsibility requirements for eligible USTs. To use the ~~UMFSTTFMFUSTTF~~ as a mechanism for meeting the requirements of LAC 33:XI.1107, the owner or operator must be an "eligible participant," as defined in Subsection A of this Section. In addition, the owner or operator must use one of the other mechanisms described in LAC 33:XI.1111-1119 or 1123-1125 to demonstrate financial responsibility for the amounts specified in Subsection C of this Section, which are the responsibility of the participant and not covered by the ~~UMFSTTFMFUSTTF~~.

A. Definitions. The following terms shall have the meanings ascribed to them as used in this Section.

* * *
 [See Prior Text]

Eligible Participant—~~any owner or operator of an underground motor fuel storage tank that has registered said tank with the department and who has met the financial responsibility requirements specified in LAC 33:XI.1121.B.~~any owner of an underground storage tank who has registered said tank with the department prior to the date of a release, has paid the annual tank registration fees along with any late payment fees, and has met the financial responsibility requirements imposed by Subsection B of this Section.

Motor Fuel Underground Storage Tank—a UST used only to contain an accumulation of motor fuels.

Third Party Claim—~~any civil action brought or asserted by any person against any owner of any UST for damages to person or property when damages are the direct result of the contamination of groundwater and/or subsurface soils by motor fuels released during operation of storage tanks covered by this Section.~~

Response Action—~~any activity, including, but not limited to, assessment, planning, design, engineering, construction, operation of recovery system, or ancillary services that are carried out in response to any discharge or release or threatened release of motor fuels into the groundwater or subsurface soils.~~

Response Action Contractor—~~a person who has been approved by the department and is carrying out any response action, including a person retained or hired by such person to provide services relating to a response action.~~

Substantial Compliance—the owner or operator of a UST system shall be considered to be in substantial compliance when he or she has registered that tank with the department in accordance with LAC 33:XI.301, has complied with the state and federal laws and regulations

applicable to USTs and the rules and regulations adopted pursuant thereto, has met the financial responsibility requirements specified in LAC 33:XI.1121. Subsection B of this Section, and has promptly notified the administrative authority of any third-party claim or suit made against him or her.

Third-Party Claim— any civil action brought or asserted by any person against the secretary of the department and any owner of any underground storage tank for damages to person or property when damages are the direct result of the contamination of groundwater and/or subsurface soils by motor fuels released during operation of storage tanks that were being operated in substantial compliance as provided for in this Section. The term damages to person shall be limited to damages arising directly out of the ingestion or inhalation of petroleum constituents from water well contamination or inhalation of petroleum constituents seeping into homes or buildings, and the term damages to property shall be limited to the unreimbursed costs of a response action and the amount by which property is proven to be permanently devalued as a result of the release.

Underground Motor Fuel Storage Tank— a UST used only to contain an accumulation of motor fuels.

B. Financial Responsibility Requirements for ~~UMFSTTFMFUSTTF~~ Participants

1. Unless revised by the administrative authority in accordance with R.S. 30:2195.9(A)(3), ~~UMFSTTFMFUSTTF~~ participants taking response actions must pay the following amounts before any disbursements are made from the fund:

* * *

[See Prior Text in B.1.a-4]

C. Conditions for Use of the ~~UMFSTTFMFUSTTF~~. Funds in the ~~UMFSTTFMFUSTTF~~ shall be used under the following conditions:

1. Whenever the administrative authority determines that an incidence of groundwater or subsurface soils contamination resulting from the storage of motor fuels may pose a threat to the environment or to public health, safety, or welfare, and the owner or operator of the UST system has been found to be an eligible participant (as defined in LAC 33:XI.1121.A), the department shall obligate monies available in the ~~UMFSTTFMFUSTTF~~ to provide for the following response actions:

* * *

[See Prior Text in C.1.a-c.i]

ii. Subject to the provisions of Subsection C.2 and 3 of this Section, the funds in the ~~UMFSTTFMFUSTTF~~ shall be used to replace leaking USTs and attendant product piping if the tanks are of double-wall construction of continuous glass filament winding, are manufactured in Louisiana by a corporation whose domicile and corporate headquarters are in Louisiana, and comply with all applicable state and federal standards. Said funds shall be allocated on a match basis of 25 percent of the replacement cost of the leaking tanks and piping.

iii. The monies expended from the ~~UMFSTTFMFUSTTF~~ for any of the above approved costs shall be spent only up to such sum as that which is necessary to satisfy petroleum UST financial responsibility requirements specified in LAC 33:XI.1107.

2. Whenever the department has incurred costs for taking response actions with respect to the release of motor fuels from a UST system, or the department has expended funds from the ~~UMFSTTFMFUSTTF~~ for response costs or third-party liability claims, the owner or operator of the underground motor fuel storage tank shall be liable to the department for such

costs only if the owner or operator was not in substantial compliance on the date of discharge of the motor fuels that necessitated the cleanup. Otherwise, liability is limited to the provisions contained in LAC 33:XI.1121.B. Nothing contained herein shall be construed as authorizing the expenditure from the UMFSTTFMFUSTTF on behalf of any owner or operator of a UST system who is not an eligible participant on the last anniversary date of the UMFSTTFMFUSTTF for any third-party liability.

3. If the administrative authority has expended funds on behalf of an owner or operator who was not in substantial compliance, and the UMFSTTFMFUSTTF is entitled to reimbursement of those funds so expended, the administrative authority shall have the authority to, and is obligated to, use any and all administrative and judicial remedies that might be necessary for recovery of the expended funds plus legal interest from the date of payment by the administrative authority and all costs associated with the recovery of the funds.

4. The UMFSTTFMFUSTTF may be used for reimbursement of any costs associated with the review of applications for reimbursement from the UMFSTTFMFUSTTF, legal fees associated with the collection of costs from parties not in substantial compliance, audits of the UMFSTTFMFUSTTF, and accounting and reporting regarding the uses of the UMFSTTFMFUSTTF.

5. The UMFSTTFMFUSTTF may be used to make payments to a third party who brings a third-party claim against any owner or operator of an underground motor fuel storage tank because of damages caused by a release into the groundwater or subsurface soils and who obtains a final judgment in said action enforceable in Louisiana against the owner or operator only if it has been satisfactorily demonstrated that the owner or operator was an eligible participant as defined in LAC 33:XI.1121.A when the release occurred. The indemnification limit of the UMFSTTFMFUSTTF with respect to satisfaction of third-party claims shall be that which is necessary to satisfy the requirements of LAC 33:XI.Chapter 11.

D. Procedures for Disbursements from the UMFSTTFMFUSTTF

1. Monies held in the UMFSTTFMFUSTTF are disbursed by the administrative authority in the following manner:

* * *

[See Prior Text in D.1.a]

b. Cost-effective procedures, as established by the administrative authority, shall be implemented by eligible participants using UMFSTTFMFUSTTF monies.

2. Payments are made to third parties who bring suit against the administrative authority in his or her official capacity as representative of the UMFSTTFMFUSTTF and the owner or operator of an underground motor fuel storage tank who is an eligible participant as defined in LAC 33:XI.1121.A and such third party obtains a final judgment in that action enforceable in Louisiana. The owner or operator stated above shall pay the amount required by LAC 33:XI.1121.B toward the satisfaction of said judgment, and after that payment has been made, the UMFSTTFMFUSTTF will pay the remainder of said judgment. The attorney general of the state of Louisiana is responsible for appearing in said suit for and on behalf of the administrative authority as representative of the UMFSTTFMFUSTTF. The administrative authority as representative of the UMFSTTFMFUSTTF is a necessary party in any suit brought by any third party that would allow that third party to collect from the UMFSTTFMFUSTTF, and the administrative authority must be made a party to the initial proceedings. Payment shall be made to the third-party claimant only if the judgment is against an owner or operator who was an

eligible participant on the date that the incident that gave rise to the claim occurred. The costs to the attorney general of defending these suits, or to those assistants that the administrative authority employs or the attorney general appoints to assist, shall be recovered from the ~~UMFSTTFMFUSTTF~~. If the ~~UMFSTTFMFUSTTF~~ is insufficient to make payments when the claims are filed, such claims shall be paid in the order of filing when monies are paid into the ~~UMFSTTFMFUSTTF~~. Neither the amount of money in the ~~UMFSTTFMFUSTTF~~, the method of collecting it, nor any of the particulars involved in setting up the ~~UMFSTTFMFUSTTF~~ shall be admissible as evidence in any trial in which suit is brought when the judgment rendered could affect the ~~UMFSTTFMFUSTTF~~.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2194 – 2195.10.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990), amended LR 17:658 (July 1991), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2561 (November 2000), LR 27:

Title 33
ENVIRONMENTAL QUALITY
Part XI. Underground Storage Tank

Chapter 12. Requirements for Response Action Contractors who Assess and Remediate Motor Fuel Contaminated Sites Eligible for Cost Reimbursement in Accordance with the Motor Fuels Underground Storage Tank Trust Fund (MFUSTTF)

§1201. Scope

A. These requirements apply to persons engaged in release response action activities including, but not limited to, assessment, remedial planning, design, engineering, construction, and the operation of recovery systems or ancillary services that are carried out in response to any discharge or release or threatened release of motor fuel into the groundwater or subsurface soils, and who have been hired by an owner or operator who seeks and is eligible for reimbursement for such services under the MFUSTTF, hereinafter referred to as the Tank Trust Fund (TTF).

B. Effective July 15, 1988, the Tank Trust Fund required that Response Action Contractors (RACs) be approved by the department. Any RAC performing UST site work due to a release eligible for Tank Trust Fund participation must meet standards approved by the department, and its name must appear on the RAC list maintained by the department. Only RACs appearing on the list at the time the work was performed are eligible for reimbursement from the TTF.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2194.C and 2195.10.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 27:

§1203. Prohibitions

A. Twelve months after promulgation of these regulations, [date to be inserted], no person shall conduct a response action at a UST site unless the person has met the standards for the qualification of a RAC, as defined herein, and appears on the approved current RAC listing. These RACs shall be approved for RAC listing by the administrative authority. The MFUSTTF Advisory Board (hereinafter referred to as the "Board") may recommend to the administrative authority at any time that RACs be added or deleted from the list.

B. Persons performing technical services, as defined in LAC 33:XI.103, must be RACs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2194.C and 2195.10.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 27:

§1205. Qualifications

A. In order to be listed by the department as an approved RAC for work that is eligible for Tank Trust Fund reimbursement, persons must submit, on a department-prescribed application form, documentation demonstrating and verifying that they meet the following minimum requirements:

1. the applicant must be licensed by the State of Louisiana Licensing Board for Contractors with a specialty compatible with UST assessment/remedial activities. A copy of the valid, unexpired license must be provided in the name of the applicant to be placed on the RAC list;

2. the applicant must have a minimum of \$1 million of contractor's general

liability insurance and a minimum of \$1 million of coverage for an accidental and/or unexpected release(s) from a UST system(s) and/or any other accidental releases related to site-specific RAC activities. A valid, unexpired copy of the certificates of insurance coverage must be provided in the name of the applicant to be placed on the RAC list and with the department listed as an additional insured. Certificate of insurance shall provide that the insurer shall give 30 days notice of cancellation to all insured;

3. the applicant's employees must comply with applicable Occupational Safety and Health Administration (OSHA) training and certification requirements. A written statement indicating compliance must be provided;

4. the applicant must have either a geologist or a Louisiana registered professional engineer on staff;

5. the applicant's employees must be able to begin work at any site within 72 hours of authorization from an eligible Tank Trust Fund participant. A written statement indicating compliance must be provided; and

6. the applicant must provide a job history and adequately demonstrate relevant experience in environmental subsurface investigation and remediation at sites exhibiting subsurface motor fuels contamination. A minimum of five jobs must be documented, and the applicant must adequately demonstrate the following:

a. experience in oversight of installation of groundwater monitoring wells and soil borings;

b. experience in developing and sampling/monitoring groundwater monitoring wells;

c. experience in the oversight of physical removal, treatment, and/or proper disposal of soils contaminated with hydrocarbons or motor fuels;

d. experience in the removal of free phase hydrocarbons from the subsurface; and

e. proficiency with projects that require design and installation/implementation of corrective action programs for the purpose of remediating contaminated soils and/or groundwater sites impacted by USTs.

B. In order to adequately demonstrate required experience, as provided in Subsection A.6.a—e of this Section, only the applicant's experience, or the experience of a full-time employee of the applicant, shall be considered. The experience of a subcontractor or person(s) on retainer shall not be considered, and therefore, will not meet the requirements of this Section.

C. The RAC List will be updated once per quarter to include applicants who have met the requirements of this Section. All new applications or annual updates shall be submitted to the Office of Environmental Services, Permits Division by 4:30 p.m. on or before the fifteenth day of March, June, September, and December.

D. Applicants who submit applications lacking the documentation required in Subsection A of this Section shall be notified in writing of the deficiencies.

E. Any application that adequately demonstrates the requirements of Subsection A of this Section shall be submitted to the administrative authority for approval. Upon approval by the administrative authority the applicant shall be included on the approved RAC list.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2194.C and 2195.10.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 27:

§1207. RAC Listing

A. Notification Requirements. Notification in writing shall be made to the department within 30 days by a RAC who no longer meets the qualification requirements of LAC 33:XI.1205.A.

B. Annual Update Requirements. No later than March 1 of each year, each RAC shall submit the following information to the department:

1. a copy of a valid, unexpired license by the State of Louisiana Licensing Board for Contractors with a specialty compatible with UST assessment/remedial activities in the name of the RAC identified on the RAC listing;

2. a copy of a valid, unexpired certificate bearing the name of the person identified on the RAC listing indicating a minimum of \$1 million contractor's general liability insurance and a minimum of \$1 million of coverage for an accidental and/or unexpected release(s) from a UST system(s) and/or any other accidental releases related to site-specific RAC activities; and

3. a copy of a certificate or documentation showing current OSHA compliance for HAZWOPER training, as defined in 29 CFR 1910.120, for at least one full-time employee of the RAC.

C. Failure to submit the documentation required in this Section shall result in removal from the RAC listing until such time as the required information is submitted and reviewed by the department and the administrative authority approves the RAC listing.

D. A RAC shall notify the owner/operator within 24 hours of receiving notice of a RAC listing removal, suspension, and/or revocation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2194.C and 2195.10.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 27:

§1209. Suspension/Revocation from RAC Listing

A. The administrative authority may suspend or revoke a RAC from the listing based on the following:

1. evidence of fraud or deceit with respect to any documentation submitted to the department; or

2. willful violation of the laws and regulations of Louisiana regarding site assessment or remediation.

B. The administrative authority may revoke a RAC's listing when the RAC or its employees have been convicted of a felony related to response action activities. This revocation is not subject to the RAC listing revocation procedures provided for in this Section.

C. The suspension or revocation of a RAC listing will depend upon seriousness of the offense(s).

1. After a suspension period of 90-365 days as specified by the department, a RAC may petition the department in accordance with the requirements of LAC 33:XI.1205 for relisting.

2. After a period of five years, a RAC whose listing has been revoked may reapply. If a RAC listing is revoked a second time, the revocation shall be permanent.

D. Written Notice

1. When the department determines that a RAC listing should be suspended or revoked, the department shall notify that RAC by certified mail. Such written notice shall contain the following:

a. facts that will justify a recommendation to the administrative authority for suspension or revocation from the RAC listing;
b. a description of the general nature of the evidence supporting the recommendation; and
c. unless the RAC, within 30 days after receipt of the notice, submits a request for an informal hearing before the board, the department shall recommend to the administrative authority that the RAC's listing be suspended or revoked. The request for informal hearing shall be submitted to the Office of Management and Finance, Financial Services Division. A written statement giving the RAC's view of the circumstances shall accompany the request for hearing.

2. If the RAC does not mail a request for hearing and a statement of the circumstances within the time frame specified, the department shall recommend to the administrative authority the suspension for a specified period of time or revocation from the RAC listing.

E. Hearings Before the Board

1. At least 20 days prior to a hearing, the department shall provide the RAC with a notice of the hearing. The notice shall be sent by certified mail and include the time, date, and location of the hearing.

2. All hearings on suspension or revocation from the RAC listing held before the board shall not be an adjudicatory hearing as provided for in the Administrative Procedure Act and shall be conducted with rapidity and without the observance of all formalities. All hearings conducted by the board shall be recorded and a transcript prepared.

3. Within 90 days after conducting an informal hearing, the board shall forward its recommendation to the administrative authority for a decision.

4. Upon receiving notice of a RAC listing removal, suspension, and/or revocation, a RAC shall notify the owner/operator within 24 hours.

F. Record of Hearing. The record of proceedings conducted under this Section shall consist of the following:

1. the RAC's certified request for hearing and statement of the circumstances;

2. the notice of the hearing;

3. all documentary evidence and written comments received;

4. the recording of the hearing; and

5. written recommendations from the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2194.C and 2195.10.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 27:

FISCAL AND ECONOMIC IMPACT STATEMENT

FOR ADMINISTRATIVE RULES LOG #:UT007

Person Sharon Parker

Department: Environmental Quality

Preparing

Office: Environmental Assessment

Statement

Phone: (225) 765-0380

Return P.O. Box 82178

Rule Title: Requirements for Response Action Contractors,

Address: Baton Rouge, LA 70884

LAC 33:XI.103, 1121, and Chapter 12

Date Rule

Takes Effect: Upon Promulgation

SUMMARY

(Use complete sentences)

In accordance with Section 953 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a fiscal and economic impact statement on the rule proposed for adoption, repeal or amendment. THE FOLLOWING STATEMENTS SUMMARIZE ATTACHED WORKSHEETS, I THROUGH IV AND WILL BE PUBLISHED IN THE LOUISIANA REGISTER WITH THE PROPOSED AGENCY RULE.

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no anticipated increase or decrease in costs to implement the proposed action.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no anticipated effect on revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)

Implementation of this rule will affect persons or firms who are engaged in underground storage tank release response action activities that are eligible for reimbursement under the Motor Fuel Underground Storage Tank Trust Fund (MFUSTTF). The department believes that persons or firms that conduct this type work will meet the qualifications and requirements of this proposed regulation. A draft rule was distributed to firms who currently do Responsive Action Contractor (RAC) work requesting comments on the proposed language. Many comments were received and addressed in this proposed rule. Most RACs who responded did not indicate that the rule would add any additional financial burden. The department anticipates

that firms which are currently on the department's RAC list will be the same firms on the list under the proposed rule, and therefore, no expanded economic benefit opportunities will be realized.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The qualifications stipulated by the rule are considered to be necessary for firms to competently conduct environmental response/remediation work. Firms that currently conduct underground storage tank environmental response/remediation activities are expected to be able to qualify for status as a RAC. Companies who choose not to apply will be negatively affected since only RACs are eligible for work that is reimbursable under the MFUSTTF.

Signature of Agency Head or Designee

LEGISLATIVE FISCAL OFFICER OR DESIGNEE

James H. Brent, Ph.D. Assistant Secretary
Typed Name and Title of Agency Head
or Designee

Date of Signature
LFO 7/1/94

Date of Signature

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

The following information is requested in order to assist the Legislative Fiscal Office in its review of the fiscal and economic impact statement and to assist the appropriate legislative oversight subcommittee in its deliberation on the proposed rule.

- A. Provide a brief summary of the content of the rule (if proposed for adoption or repeal) or a brief summary of the change in the rule (if proposed for amendment). Attach a copy of the notice of intent and a copy of the rule proposed for initial adoption or repeal (or, in the case of a rule change, copies of both the current and proposed rules with amended portions indicated).

This proposed rule sets the qualifications, notification, annual update requirements, and removal, suspension, and revocation procedures for a person to become a Response Action Contractor (RAC). RAC status allows a person or firm to carry out actions in response to a discharge or release of motor fuel from an underground storage tank and be eligible for reimbursement under the Motor Fuel Underground Storage Tank Trust Fund (MFUSTTF). The rule also corrects typographical errors and establishes new definitions.

For approximately 10 years the department has, by policy, been approving persons or firms as RACs. This action will put into regulation many of the provisions from the previous policy and also revise and add other requirements.

- B. Summarize the circumstances which require this action. If the Action is required by federal regulation, attach a copy of the applicable regulation.

This proposed rule is in response to La. R.S. 30:2195.10 which requires the department to promulgate rules and regulations for the approval and compensation of response action contractors.

- C. Compliance with Act II of the 1986 First Extraordinary Session
 - (1) Will the proposed rule change result in any increase in the expenditure of funds? If so, specify amount and source of funding.

No, there will be no increase in the expenditure of funds.

- 2) If the answer to (1) above is yes, has the Legislature specifically appropriated the funds necessary for the associated expenditure increase?

- (a) _____ Yes. If yes, attach documentation.
- (b) _____ No. If no, provide justification as to why this rule change should be published at this time.

This section is not applicable.

FISCAL AND ECONOMIC IMPACT STATEMENT

WORKSHEET

I. A. COSTS OR SAVINGS TO STATE AGENCIES RESULTING FROM THE ACTION PROPOSED

1. What is the anticipated increase (decrease) in costs to implement the proposed action?

There is no anticipated increase or decrease in costs to implement the proposed action. The department has been qualifying RAC's, by policy, for approximately 10 years and has staff dedicated to this activity.

COSTS	FY 00-01	FY 01-02	FY 02-03
PERSONAL SERVICES			
OPERATING EXPENSES			
PROFESSIONAL SERVICES			
OTHER CHARGES			
<u>EQUIPMENT</u>			
TOTAL	0	0	
<u>0</u>			
<u>MAJOR REPAIR & CONSTR.</u>			

POSITIONS(#)

2. Provide a narrative explanation of the costs or savings shown in "A.1.", including the increase or reduction in workload or additional paperwork (number of new forms, additional documentation, etc.) anticipated as a result of the implementation of the proposed action. Describe all data, assumptions, and methods used in calculating these costs.

This section is not applicable.

3. Sources of funding for implementing the proposed rule or rule change.

SOURCE	FY 00-01	FY 01-02	FY 02-03
STATE GENERAL FUND			
AGENCY SELF-GENERATED			
DEDICATED			

FEDERAL FUNDS

OTHER (Specify)

TOTAL	0	0	0
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4. Does your agency currently have sufficient funds to implement the proposed action? If not, how and when do you anticipate obtaining such funds?

No additional funding is necessary to implement the proposed rule.

B. COST OR SAVINGS TO LOCAL GOVERNMENTAL UNITS RESULTING FROM THE ACTION PROPOSED.

1. Provide an estimate of the anticipated impact of the proposed action on local governmental units, including adjustments in workload and paperwork requirements. Describe all data, assumptions and methods used in calculating this impact.

The proposed rule will have no effect on local governmental units.

2. Indicate the sources of funding of the local governmental unit, which will be affected by these costs or savings.

This section is not applicable.

FISCAL AND ECONOMIC IMPACT STATEMENT

WORKSHEET

II. EFFECT ON REVENUE COLLECTIONS OF STATE AND LOCAL GOVERNMENTAL UNITS

A. What increase (decrease) in revenues can be anticipated from the proposed action?

There is no anticipated effect on revenue collections of state or local governmental units.

REVENUE INCREASE/DECREASE	FY 00-01	FY 01-02	FY 02-03
STATE GENERAL FUND			
AGENCY SELF-GENERATED			
RESTRICTED FUNDS*			
FEDERAL FUNDS			
<u>LOCAL FUNDS</u>			
TOTAL	0	0	0

*Specify the particular fund being impacted.

B. Provide a narrative explanation of each increase or decrease in revenues shown in "A." Describe all data, assumptions, and methods used in calculating these increases or decreases.

This section is not applicable.

III. COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS

A. What persons or non-governmental groups would be directly affected by the proposed action? For each, provide an estimate and a narrative description of any effect on costs, including workload adjustments and additional paperwork (number of new forms, additional documentation, etc.), they may have to incur as a result of the proposed action.

Implementation of this rule will affect persons or firms who are engaged in underground storage tank release response action activities that are eligible for reimbursement under the MFUSTTF. The department believes that persons or firms that conduct this type work will meet the qualifications and requirements of this proposed regulation. A draft rule was distributed to firms who currently do RAC work requesting comments on the proposed language. Many comments were received and addressed in this proposed rule. Most RACs who responded did not indicate that the rule would add any additional financial burden.

- B. Also provide an estimate and a narrative description of any impact on receipts and/or income resulting from this rule or rule change to these groups.

Firms that meet the qualifications and elect to apply for RAC status will be able to compete for underground storage tank response work that is eligible for reimbursement under the MFUSTTF. The department anticipates, however, that firms which are currently on the department's RAC list will be the same firms on the list under the proposed rule and therefore, no expanded employment opportunities will be realized.

IV. EFFECTS ON COMPETITION AND EMPLOYMENT

Identify and provide estimates of the impact of the proposed action on competition and employment in the public and private sectors. Include a summary of any data, assumptions and methods used in making these estimates.

The qualifications stipulated by the rule are considered to be necessary for firms to competently conduct environmental response/remediation work. Firms that currently conduct underground storage tank environmental response/remediation activities are expected to be able to qualify for status as a RAC. Companies who choose not to apply will be negatively affected since only RACs are eligible for work that is reimbursable under the MFUSTTF.